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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,856	11/26/2003	Ashwin Anil Gumaste	064731.0375	8578
5073 7590 05/27/2008 BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				
EXAMINER LEUNG, CHRISTINA Y				
ART UNIT 2613		PAPER NUMBER		
NOTIFICATION DATE 05/27/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/722,856

**Applicant(s)**

GUMASTE ET AL.

**Examiner**

Christina Y. Leung

**Art Unit**

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 13-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/08)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :12-15-03; 11-14-05; 11-05-04; 9-8-06; 8-1-06; 7-13-05; 6-24-05; 6-1-07; 5-23-06; 4-21-04; 4-20-07; 4-2-04; 3-24-04; 1-12-06.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of embodiment 2, corresponding to **claims 1-12**, in the reply filed on 18 February 2008 is acknowledged.
2. **Claims 13-52** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiments, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 18 February 2008.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 1-3, 10, and 11** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claim 1 of U.S. Patent No. 7,321,729 B2** in view of **Arecco et al.** (US 2002/003639 A1).

**Claims 1-3 and 10** of the present application recites many of the same elements and limitations as claim 1 of US 7,321,729 B2, including an optical network and a plurality of gateway nodes, wherein a first gateway node is operable to

forward a first copy of a received optical signal to a multiplexer/demultiplexer unit of the first gateway node, the multiplexer/demultiplexer unit operable to multiplex the first copy into one or more constituent wavelengths and to selectively forward or terminate the traffic in each wavelength of the first copy;

forward a second copy of the received optical signal to a regeneration element of the first gateway node, the second copy thus bypassing the multiplexer/demultiplexer unit;

selectively forward or terminate the traffic in each wavelength of the first copy at the multiplexer/demultiplexer unit; and

selectively perform one of the following on the traffic in each wavelength of the second copy at the regeneration element: terminate the traffic, forward the traffic to the second optical network, or forward the traffic on the first optical network after regenerating the traffic.

Examiner notes that claim 1 of the present application recites a network comprising “a first optical network and a second optical network” and gateway nodes coupled to the first and second optical networks, while claim 1 of the patent recites a network comprising “a plurality of subnets” and gateway nodes coupled “at a boundary between neighboring subnets.” However, it would be well understood in the art that the first and second optical networks of claim 1 of the present application can correspond to the “subnets” of the system as recited by claim 1 of the patent. Both claim 1 of the present application and claim 1 of the patent recite gateway nodes coupled to corresponding networks/subnetworks and enable communication between the networks/subnetworks.

Regarding claims 2, 3, and 10 of the present application in particular, claims 2, 3, and 10 depend on claim 1 of the present application and further recite limitations that are similar to those already recited in claim 1 of US 7,321,729 B2, including a regeneration element further operable to selectively forward the traffic after regenerating and converting the wavelength of the traffic; a plurality of subnets, each subnet comprising a plurality of add/drop nodes, the number of subnets equal to the number of gateway nodes in the network; and that each wavelength that is regenerated by the signal regeneration element is terminated by the multiplexer/demultiplexer unit.

Claims 1-3 and 10 of the present application differ from claim 1 of the patent in that claim 1 of the present application further recites “a second gateway node coupled to the second optical network and operable to: receive the traffic contained in the second copy forwarded from the first gateway node; and add the traffic contained in the second copy forwarded from the first gateway node to a ring of the second optical network.”

However, Arecco et al. teach a system that is related to the one described by claim 1 of US 7,321,729 B2, including an optical network system comprising first and second networks and gateway nodes D, D', E, and E' between them (Figure 21). Arecco et al. further teach that a gateway node in one network (i.e., a "second gateway node" D' in a "second optical network" 2) is operable to receive traffic forwarded from another gateway node of the other network (i.e., "first gateway node" D in "first optical network" 1) and add the traffic to a ring of the optical network (i.e., the "second optical network" 2; see Figure 21 and pages 15-16, paragraphs [0251]-[0277]).

Given claim 1 of US 7,321,729 B2, it would have been obvious to a person of ordinary skill in the art to create claims 1-3 and 10 of the present application by further providing that the second gateway node receives and add signals to the second optical network as taught by Arecco et al. simply in order to enable traffic to move from the first network to the second network and enable the users of the entire system to share communications. Therefore, claims 1-3 and 10 of the present application are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of US 7,321,729 B2 in view of Arecco et al.

Regarding **claim 11** of the present application, claim 1 of US 7,321,729 B2 does not specifically recite that a first gateway node is further operable to add traffic to the first network that is received from a second gateway node coupled to the second network. However, again, Arecco et al. teach that a gateway node in one network (i.e., a "first gateway node" D in a "first optical network" 1) is operable to receive traffic forwarded from another gateway node of the other network (i.e., "second gateway node" D' in "second optical network" 2) and add the traffic to a ring of the optical network (i.e., the "first optical network" 1; see Figure 21 and pages 15-16,

paragraphs [0251]-[0277]). Given claim 1 of US 7,321,729 B2, it would have been obvious to a person of ordinary skill in the art to create claim 11 of the present application by further providing that the first gateway node add signals to the second optical network as taught by Arecco et al. simply in order to enable traffic to move from the second network to the first network and enable the users of the entire system to share communications. Therefore, claim 11 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of US 7,321,729 B2 in view of Arecco et al.

5. **Claims 4-9** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 2-7, respectively, of U.S. Patent No. 7,321,729 B2** in view of **Arecco et al.**

**Claim 4** of the present application depends on claims 1 and 3 and further recites limitations that correspond to limitations further recited in dependent claim 2 of US 7,321,729 B2. Therefore, claim 4 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claims 1 and 3.

**Claim 5** of the present application depends on claim 1 and further recites limitations that correspond to limitations further recited in dependent claim 3 of US 7,321,729 B2. Therefore, claim 5 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claim 1.

**Claim 6** of the present application depends on claim 1 and further recites limitations that correspond to limitations further recited in dependent claim 4 of US 7,321,729 B2. Therefore,



claim 6 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claim 1.

**Claim 7** of the present application depends on claims 1 and 6 and further recites limitations that correspond to limitations further recited in dependent claim 5 of US 7,321,729 B2 (which depends on claims 1 and 4 of the patent). Therefore, claim 7 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claims 1 and 6.

**Claim 8** of the present application depends on claims 1, 6, and 7 and further recites limitations that correspond to limitations further recited in dependent claim 6 of US 7,321,729 B2 (which depends on claims 1, 4, and 5 of the patent). Therefore, claim 8 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claims 1, 6, and 7.

**Claim 9** of the present application depends on claim 1 and further recites limitations that correspond to limitations further recited in dependent claim 7 of US 7,321,729 B2. Therefore, claim 9 of the present application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 7 of US 7,321,729 B2 in view of Arecco et al. for the same reasons given above for parent claim 1.

*Allowable Subject Matter*

6. **Claim 12** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. **Claims 1-11** appear to contain allowable subject matter but are currently rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over various claims of US 7,321,729 B2 in view of Arecco et al. as discussed in detail above.

8. The following is a statement of reasons for the indication of allowable subject matter:

**Arecco et al. (US 2002/0003639 A1)** generally disclose an optical communication network comprising first and second networks each comprising at least one gateway node and a plurality of add/drop nodes (Figure 21).

**Takeshita et al. (EP-0907266-A2)** generally disclose an optical communication network comprising a plurality of networks each comprising at least one gateway node and a plurality of add/drop nodes (Figure 3).

**Roorda et al. (US 2002/0186542 A1)** generally disclose an optical communication network including a junction node comprising elements for selectively switching or regenerating a received optical signal (Figure 4; pages 4-5, paragraphs [0064]-[0071]).

**Sandesara (US 5,179,548 A)** generally discloses an optical communication network including subnets with gateway nodes and a plurality of add/drop nodes (Figures 10-12)

**Hamel (EP-0677935-A1)** generally discloses an optical communication network including subnets with gateway nodes N1 and N2 and a plurality of add/drop nodes S1-S3 (Figure 2).

**Sharratt et al. (GB-2359433-A)** generally disclose an optical communication network including a plurality of ring networks each comprising at least one gateway/interface node comprising elements for selectively switching or regenerating a received optical signal (Figures 1 and 2).

However, the prior art, including Arecco et al., Takeshita et al., Roorda et al., Sandesara, Hamel, and Sharratt et al., does not specifically disclose or fairly teach a system including the particular combination of all of the elements and limitations recited in claims 1-12, particularly including an optical network system comprising first and second optical networks, each network comprising at least one optical gateway node and a plurality of passive optical add/drop node, and a first gateway node coupled to the first optical network and second gateway node coupled to the second optical network, wherein the first and second gateway nodes are operable to perform the combination of functions specifically recited in claim 1.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Y. Leung, whose telephone number is 571-272-3023. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached at 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christina Y. Leung/

Primary Examiner, Art Unit 2613